

FEDERAL COMMUNICATIONS COMMISSIONDA 98-2644

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

JAN 11 1999

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In the Matters of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation Provisions)	CC Docket No. 96-128
of the Telecommunications Act of 1996)	
)	
Requests by SBC, Southern New England)	
Telephone, and GTE to Extend Waiver)	NSD-L-98-147
of Coding Digit Requirement)	
)	
American Public Communications Council)	
Motion for Deferral of the Effective Date of)	NSD-L-98-148
the Payphone Order's Call Tracking)	
Verification Requirement)	

ORDER**Adopted: December 29, 1998****Released: December 31, 1998****Comments Due: January 29, 1999****Reply Comments Due: February 5, 1999**

By the Chief, Network Services Division, Common Carrier Bureau:

I. INTRODUCTION

1. We have before us three petitions to extend previously authorized limited waivers of the Commission's requirements regarding the provision of payphone-specific coding digits, which are intended to identify calls from payphones that are eligible for compensation for subscriber 800 and access code calls. The previous limited waivers relieved, under certain circumstances, the obligation of certain local exchange carriers (LECs) to transmit Flexible Automatic Number Identification (Flex ANI) coding digits to interexchange carriers (IXCs). These waivers also relieved IXCs from the obligation to pay per-call compensation to payphone service providers (PSPs) for calls from payphones where Flex ANI or other payphone-specific coding digits are not available. The waivers were originally ordered in the Commission's *Payphone Orders* to

expire on October 7, 1997,¹ but have been extended three times and will expire on December 31, 1998.² The petitions before us were filed just three weeks before the current expiration date, by Southwestern Bell Telephone, Pacific Bell, and Nevada Bell (collectively, SBC) (filed December 9, 1998); by Southern New England Telephone (SNET) (filed December 9, 1998); and by GTE Service Corporation (GTE) (filed December 10, 1998).

2. In this Order, we deny the petitions. This denial, however, is without prejudice to our further consideration of the requested waivers following our examination of public comments and additional information from the Petitioners. We also find that payphone compensation as paid before December 31, 1998, must continue without interruption until we take further action. In addition, we seek comment on a related motion filed by the American Public Communications Council.

II. BACKGROUND

3. In the *Payphone Orders* adopted in 1996, the Commission required LECs to provide payphone-specific coding digits to PSPs and required PSPs to provide those digits from their payphones to IXCs, by October 7, 1997. The Common Carrier Bureau, on its own motion, first extended the compliance date for these requirements to March 9, 1998.³ Subsequently, in granting requested waivers to extend the compliance to June 1998, the Bureau expressly noted that providing payphone-specific coding digits (including Flex ANI) is a prerequisite to per-call compensation for toll free and access code payphone calls.⁴ During this second extension period,

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Report and Order*, 11 FCC Rcd 20541 (1996); *Order on Reconsideration*, 11 FCC Rcd at 21233 (1996) (together the "*Payphone Orders*"). The *Payphone Orders* were affirmed in part and vacated in part. See *Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); see also Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Second Report and Order*, 13 FCC Rcd 1778 (1997); remanded, *MCI Telecomm. Corp. v. FCC*, No. 97-1675 (D.C. Cir. May 15, 1998).

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Memorandum Opinion and Order*, 12 FCC Rcd 16387 (Com. Car. Bur. 1997); *Memorandum Opinion and Order*, 13 FCC Rcd 4998 (Com. Car. Bur. 1998); *Memorandum Opinion and Order*, 13 FCC Rcd 11210 (Com. Car. Bur. 1998).

³ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Memorandum Opinion and Order*, 12 FCC Rcd 16387 (Com. Car. Bur. 1997).

⁴ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Memorandum Opinion and Order*, 13 FCC Rcd 4998 (Com. Car. Bur. 1998).

in April 1998, the Bureau granted a waiver that permitted IXCs to pay per-phone compensation to PSPs, rather than per-call compensation, for payphones from which payphone-specific coding digits are not available.⁵ In its last limited waiver order, which extended the compliance date to December 31, 1998, the Bureau emphasized that "[w]e do not anticipate granting any further extensions of these waivers beyond the time limits set forth in this order."⁶

4. In support of its current petition, SBC argues that two problems affect coding digits on a small percentage of payphone calls. The two problems described are: (1) the inability to pass Flex ANI digits on 800-type database service (e.g., 800, 888, 877) call routing to Plain Old Telephone Service phone numbers (800-to-POTS); and (2) the inability to screen the IXCs' capabilities to receive Flex ANI digits from tandem switches on 800-type database calls (800 tandem screening). SBC states that correcting the two problems is switch-specific. Accordingly, for most of SBC's NORTEL switches, SBC requests an extension until the end of the second quarter of 1999. For most of SBC's Lucent switches, SBC requests an extension until the end of the third quarter of 1999. For Ericsson switches, SBC requests an extension until the end of the first quarter of 2000. Additionally, for Nevada Bell, SBC requests an extension for the company's NORTEL DMS 10 switches until their planned replacement during 1999. For Southwestern Bell and Pacific Bell, SBC also requests an extension for the companies' Lucent 1AESS switches until their planned replacement during the 1999-2002 time period. Finally, again for Southwestern Bell and Pacific Bell, SBC requests an indefinite extension for the companies' Lucent 4ESS switches for correcting only the 800-to-POTS problem, because it states that Lucent has not responded to SBC's requests for a date by which Lucent can provide the needed software feature for solving this problem for the 4ESS switches. SBC attaches to its petition an Appendix describing the implementation process but does not include with its petition verified statements or other evidence to support its requests. Although its petition did not initially include a certificate of service on other parties, SBC did file a certificate of service on all parties on December 17, 1998.

5. In support of its petition, SNET argues that it needs an extension affecting only a small percentage of payphones within its serving area because of problems with both 800 tandem screening translation and 800-to-POTS translation, and also to accommodate SNET's scheduled upgrade of its Stratford and Milford 1AESS central offices to digital technology. SNET seeks an extension until May 31, 1999. It states that it is working with its switch vendors to resolve

⁵ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Memorandum Opinion and Order*, 13 FCC Rcd 10893 (Com. Car. Bur. 1998); *clarified, Order*, 13 FCC Rcd 7303 (Com. Car. Bur. 1998).

⁶ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Memorandum Opinion and Order*, 13 FCC Rcd. 11210, para. 24 (Com. Car. Bur. 1998).

the problems associated with Flex ANI implementation. SNET does not include with its petition verified statements or other evidence to support its requests. Although its petition did not initially include a certificate of service on other parties, SNET did file a certificate of service on December 17, 1998.

6. In support of its petition, GTE argues that it needs an extension until June 30, 1999, because of two factors that it contends will delay its ability for full implementation: (1) certain GTE end offices at the tandem level are not yet Flex ANI-capable because they subtend non-affiliated carriers' tandems that are not Flex ANI-capable; and (2) Lucent will not be able to provide the required Flex ANI software upgrade packages for GTE Lucent tandems until March 1999. GTE states that, based on the commitments received, it believes it can be 100% compliant by June 30, 1999. GTE includes two exhibits with its petition consisting of a brief letter from Lucent stating, without explanation, "The current anticipated availability of these features is March, 1999," and a list of "GTE exchanges subtending RBOC/ILEC access tandems." GTE's petition includes a certificate of service upon all parties of record.

III. DISCUSSION

7. Any provision of the Commission's rules may be waived on our own motion or on petition if "good cause therefor is shown."⁷ The record before us consists only of the three petitions. The petitions include partial explanations for the waiver requests, but they leave a number of questions unanswered and in need of further explanation and supporting information. The petitions do not suggest that circumstances have changed since the last time an extension was granted, and they include no evidence, such as verified statements from vendors, to substantiate their arguments. Moreover, they were filed too late to develop an adequate record before the December 31, 1998 expiration of the previous waiver. On the basis of this record, we are not persuaded that the Petitioners have presented good cause to justify yet another extension of the existing waivers.

8. Since the extension that was granted in June 1998, the Petitioners have known of the December 31, 1998 deadline and of the admonition that the Bureau did not anticipate granting any further extensions. Nevertheless, the Petitioners have not attempted to justify or to submit evidence that explains why they waited until the "eleventh hour," less than three weeks before the year's end, to request a further extension. Without an explanation supported by such evidence, we are not convinced, at this time, that the requested waivers would be in the public interest. We therefore deny the requested waivers without prejudice to our further consideration of these requests following our examination of public comments and additional information from the Petitioners. In addition, we find that payphone compensation as paid before December 31, 1998, must continue without interruption until we take further action.

⁷ 47 C.F.R. § 1.3.

9. Contemporaneously with this order, we are requiring the Petitioners, by letter, to provide specific and necessary information regarding their waiver requests by January 8, 1999. This information will be central to our further consideration of these waiver requests. For example, we note that each Petitioner alleges that the performance of its vendors is beyond its control. The petitions, however, do not indicate what performance commitments the Petitioners and their vendors agreed upon to meet each new extended compliance deadline, including the December 31, 1998 deadline, what contractual sanctions against their vendors were agreed upon for non-performance at each extended deadline, and why those agreements were not adequate to meet the Petitioners' legal obligations. Except to a very limited extent, the petitions also do not include statements from the vendors themselves, to substantiate or explain the failure to meet the December 31, 1998 deadline. At this point, vendor statements may prove important to clarify the work plans that were implemented under each of the prior extensions, to explain why prior work plans were not adequate to meet the deadlines, and to describe the work plans they are currently implementing.

10. Because the Petitioners filed their relatively unsupported extension requests only shortly before the compliance deadline, they have made it impossible for us to seek public comment on the requests and make an informed decision based on a complete record before that deadline. We recognize that under these circumstances, which are largely of their own creation, the Petitioners will not be in compliance with the requirement to provide Flex ANI payphone coding digits after December 31, 1998. This unfortunate consequence does not constitute good cause to find that another extension would be in the public interest. Rather, it would be contrary to the public interest to postpone compliance for a fourth time without an informed assessment of the facts underlying these extension requests, which may or may not show new or changed circumstances since the last extension. In light of the Bureau's prior admonition that no further extensions of the waivers were anticipated, we are reluctant to grant further waivers without a full record. Meanwhile, where payphone-specific coding digits are not yet available, IXCs must continue to pay per-phone compensation rather than per-call compensation.⁸

11. We emphasize that, in denying the petitions now, we do not prejudice whether the Bureau will later grant additional waivers. To expedite the development of an adequate record on which to reach a reasoned decision, in separate letters we will direct the Petitioners to submit additional information by January 8, 1999. We will also permit any persons wishing to comment on whether additional waivers are warranted to submit comments addressing the matters raised in the petitions by January 29, 1999; reply comments are due by February 5, 1999.

⁸ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Memorandum Opinion and Order*, 13 FCC Rcd 10893 (Com. Car. Bur. 1998); *clarified*, *Order*, 13 FCC Rcd 7303 (Com. Car. Bur. 1998).

12. Finally, on December 16, 1998, the American Public Communications Council (APCC) filed a Motion for Deferral of the Effective Date of the Payphone Order's Call Tracking Verification Requirement, contending that delays in implementing Flex ANI per-call tracking as a result of past waivers make it premature to find that carriers have adequately verified their per-call tracking capabilities.⁹ APCC also alleges irregularities in carrier performance related to tracking and per-call compensation. We will permit any persons wishing to comment on the APCC motion to submit comments by January 29, 1999; reply comments are due by February 5, 1999.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to authority contained in Sections 1, 4, 201-205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 218, 226, 276, the authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the petitions for waiver filed by SBC, SNET, and GTE are DENIED WITHOUT PREJUDICE.

14. IT IS FURTHER ORDERED that this order is effective upon release.

15. IT IS FURTHER ORDERED that comments on the SBC, SNET, and GTE waiver petitions and on the APCC motion for deferral must be submitted, separately, by **January 29, 1999**; reply comments thereon are due by **February 5, 1999**.

FEDERAL COMMUNICATIONS COMMISSION



for Anna M. Gomez, Chief
Network Services Division
Common Carrier Bureau

⁹ Previously, on November 30, 1998, APCC had filed a letter requesting the Commission to issue a Public Notice of the waiver expiration and to clarify in that notice the obligations of LECs, PSPs, and IXC's regarding the transmission of coding digits and the tracking of dial-around calls.